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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/617,062  | 07/10/2003  | Brian Muscat         | 706598US1           | 2644             |
| 24938   | 7590        | 07/28/2005           |                     |                  |
| DAIMLERCHRYSLER INTELLECTUAL CAPITAL CORPORATION<br>CIMS 483-02-19<br>800 CHRYSLER DR EAST<br>AUBURN HILLS, MI 48326-2757 |             |                      | EXAMINER            |                  |
|   |             |                      | HOOK, JAMES F       |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 3754                |                  |

DATE MAILED: 07/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/617,062             | MUSCAT ET AL.       |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | James F. Hook          | 3754                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 06 July 2005.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-17 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-17 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

|  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

***Specification***

The amendment filed July 5, 2005 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the additional language in claim directed toward the bore having a solid wall is not disclosed in the specification, and the only reading of such as meeting what is shown in the drawing would be if one considered the embodiment of figures 6 and 7 showing a solid wall bore which would create a 112 problem with the fact that dependent claims then define a slot, therefore it is believed that such is new matter and referring to the material being solid and not to the bore being solid. Also the additional language of the damper being adjustably moveable along the longitudinal axis of the hose member is new matter when the best support for such discloses the embodiment of figures 6 and 7 are slid longitudinally, but there is no support in the specification for such being the case in embodiments where the dampener is formed as a "C" shape such as is found in figures 1-5, therefore the additional language to claim 1 creates a new matter issue at least with respect to the limitations set forth in claims 2, 3, 5, 6, 11, and 12 in that there is no support for the dampener to move longitudinally with respect to the hose in the rest of the embodiments having a slot formed in the dampener.

Applicant is required to cancel the new matter in the reply to this Office Action.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-17 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. As per the objection to the specification and amendment above, there is no support in the specification for the bore to have a solid wall, and for the slotted embodiments of the dampener to be longitudinally moveable on the hose.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With no clear support for the bore being solid, such is indefinite where the scope of the limitation cannot be clearly determined as to in what manner the bore is solid, and if such is referring to the wall having no slots, then claims 2, 3, 5, 6, 11, and 12 would be indefinite where there is no possible way the wall can be solid as set forth in independent claim 1 with respect to the dampener having no slot, and then having a slot as required in these dependent claims, thereby creating an issue

of indefiniteness where the scope of the claim cannot be clearly determined. For sake of speedy prosecution the examiner assume by solid applicant was intending to refer to a material property.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 7-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Fritz. The patent to Fritz discloses the recited power steering hose comprising a hose member 2 having a first and second end, a member 6 formed as a cylindrical band around the hose member is provided to aid in the damping of pulsations and is disposed between the ends of the hose member, where the member can be moved to various positions between the ends to change the manner in which it helps dampen noise (col. 4, lines 60-69), where the band inherently has a bore operable to receive the hose, the band is made of flexible material which can be bent and crimped to engage the hose member, where such is a rigid material and a solid material, when crimped is smaller than the outer diameter of the hose at portions thereof, and at the ends of the band that aren't crimped is approximately equal to the diameter of the hose.

Claims 1 and 7-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Qatu. The patent to Qatu discloses the recited power steering hose comprising a hose

member 36 having a first and second end, a member 64 formed as a cylindrical band around the hose member is provided to aid in the damping of pulsations and is disposed between the ends of the hose member, where the member can be moved to various positions between the ends to change the manner in which it helps attenuate noise (col. 6, lines 36-54), where the band inherently has a bore operable to receive the hose, the band is made of flexible material which can be bent and crimped to engage the hose member, where such is a rigid material and a solid material, when crimped is smaller than the outer diameter of the hose at portions thereof, and at the ends of the band that aren't crimped is approximately equal to the diameter of the hose.

Claims 1-4, 7, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Opperhauser. The mention of power steering in the preamble does not breathe life into the body of the claim and therefore holds no patentable weight, and such is also merely intended use. The patent to Opperhauser discloses an article for use with a hydraulic hose which is considered the equivalent of a power steering hose which is also hydraulic that provides damping properties, the article comprising a hose member 14 having first and second ends, a damper structure 42 disposed between ends of the hose, the damper comprising a cylindrical main body having a longitudinal axis, a bore formed in the main body along the longitudinal axis, the bore receives the tube member, a slot formed by edges 48,50 is provided extending from the outer surface of the main body and terminating in the bore, the width of the slot is smaller than the diameter of the bore, the hose is made of flexible material and engages the bore which is considered to be solid material, the main body can be formed with a flat planar surface near 100 or

along its sides, and the diameter of the bore is approximately equal to the outer diameter of the hose. The clamping element of Opperthauser is seen to be provided on a track 62 and is therefore considered to be capable of being adjustably moveable and since such is disposed between the ends of the hose member are moveable there between.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5, 6, 9, and 11-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Opperthauser. The patent to Opperthauser discloses all of the recited structure with the exception of providing the planar surface near the slot, the diameter of the bore being smaller than the hose or the hose having a larger diameter than the bore, and the method of compressing the hose to pass it into the slot rather than opening the main body. It is considered to be a mere choice of mechanical design to provide the planar portion on any part of the body where such would only require a change in shape of the main body and would only require routine skill in the art, where such would reduce the extend of the main body and thereby save space. The change in dimensions of the diameter of the bore or hose are considered merely mechanical expedients where one skilled in the art would only require routine experimentation to

arrive at optimum size values. With respect to the method it is considered merely a reversal of steps to compress the hose to fit it through the slot rather than opening the slot as such is merely a reversal of the steps where such would only require routine skill in the art to understand that the hose could be collapsed instead of forcing open the main body to get the hose into the bore.

***Response to Arguments***

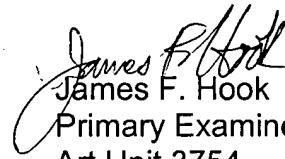
Applicant's arguments filed July 6, 2005 have been fully considered but they are not persuasive. With respect to Opperthauser, such is considered adjustable as set forth above when the bands can be moved along a track and are attached between the ends of the hose, thereby still meeting the claim language, where the movement of such within the track would inherently involve some movement longitudinally with respect to the tube being held since such would change the angle at which the tube was disposed and inherently would lead to at least a small movement of the tube longitudinally within the structure 42. With respect to Fritz, attenuation of pulsations is dampening of pulsations which is what is claimed, and moving the band to different longitudinal locations changes the manner in which the hose can attenuate or dampen the pulsations. There were no separate arguments directed toward the rejection under 35 USC 103 other than those arguments directed toward the independent claims, and such have been addressed above, therefore there appears applicant did not find the rejection in error.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James F. Hook whose telephone number is (571) 272-

4903. The examiner can normally be reached on Monday to Wednesday, work at home Thursdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar can be reached on (571) 272-4906. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
James F. Hook  
Primary Examiner  
Art Unit 3754

JFH